

VIA FAX and e-mail

To: Bruce Turnbull - CEMA
Fritz Attaway - MPAA
cc: Mark Belinsky, Gerry Brill, John Ryan, Vic Viegas

From: Bill Krepick

Subj: Macrovision's prerequisites for Orrin Hatch letter

Date: 10/5/98

Gentlemen:

In response to Bruce's e-mail of 10/4/98, we are quite happy with the bulk of the legislative history and the latest version of Amendment "J." Could you fax us the latest Amendment J? The e-mail version appeared to be in a strange format, and it had a lot of 0's and garbage data at the front and rear of the text, and we're not sure we got all the text.

We do have several questions and clarifications for the e-mail itself:

- 1) On the playability indemnification issue, we believe it is not enough to have CE manufacturers agree not to sue us over playability problems; we really need to have the CE manufacturers indemnify us against third party suits for playability problems. The reason for this is that if we delete our playability provisions, we will be taking on substantial non-compliance risk that we had previously covered through financial guarantees and indemnification in our license agreements.
- 2) With regard to the "inter-industry playability forum" we are concerned that your suggestions for the legislative history language [your e-mail (2)(a)] "creating the playability forum for resolution of any such problems that develop in the future, either due to new consumer electronic products or to changes in the specifications for Macrovision's technologies" would allow the CE manufacturers an easy escape route from their commitment on the current version of our copy protection, and might subject Macrovision to being whipsawed into frequent technical advisory fire drills. It is not acceptable to be subject to the whim of any "Tom, Dick, or Harry" company that wanted to introduce a new display device, and drag us into the forum if they had compatibility problems. Nor is it acceptable for a CE manufacturer to change components in a VCR, label it a new product, and expect Macrovision to modify its technology. Fundamentally, we are willing to freeze our technology and not change it, as long as the CE manufacturers do not change the playability or effectiveness aspects of their hardware. If they have an open door to change their products, and to cause us to have to go back and redesign ours or to spin our wheels giving technical advice, we do not think this is entirely too one-sided. Three key questions:
 - a) What commitment can we get that the rights owners will be fairly represented in the forum?
 - b) How can we get assurances that the individual CE manufacturers will not abuse the presence of the forum and request playability reviews on redesigns that are unilaterally initiated? Why can't the playability forum only be used if we change our specifications?
 - c) What assurances can we get that the "Tom, Dick, or Harry" syndrome can be controlled - so that any manufacturer can drag Macrovision through the hoops to review their own pet video display device?
- 3) We are concerned about the Amendment J language which deals with effectiveness. It appears to be very subjective, using terms like "meaningfully distorted or degraded." We know in our dealings with the CE companies that they cannot accept subjective parameters for effectiveness. Because of that we developed language in our licenses (often referred to as the 65% IRE reduction in signal

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level) to describe *objective* effectiveness criteria, similar to the playability criteria. We would like to see these effectiveness specs referenced in the legislation and legislative history, so there is no misunderstanding in the future about the definition of effectiveness.

We attach as "Exhibit 1" the sections from our current licenses dealing with effectiveness specs that we pledge to remove from our contracts, if we can have reference to it in the legislation and legislative history.

- 4) In the legislative history paragraph dealing with our "assurances" to the Chairman of the Conference, we need to make several points - and hopefully, you can adjust the language appropriately:
 - a) Our licenses are definitely reasonable and non-discriminatory on a forward going basis. Our earlier STB licensees had more favorable terms than later ones did, because they helped us get the ball rolling. Certain manufacturers who committed to minimum volumes, or 100% implementation, or other special terms got a better "deal" than others. So, I think in your licensing point #4, we can say "manufacturers of set-top boxes will receive licenses in the future on reasonable and non-discriminatory terms."
 - b) In your point #5, we would be willing to agree to the "inter-industry forum being established to deal with both playability and effectiveness issues."
 - c) We cannot accept a blanket statement that all manufacturers of videocassette recorders will be provided with royalty-free licenses for all their products, except for set-top boxes. We know of at least four potential future products for which we may be licensing analog copy protection to these CE companies on a royalty basis:
 - i) IDTVs (integrated digital TVs) with built in integrated set-top devices
 - ii) VOD (video on demand) receivers for switched data applications
 - iii) EMC3 for less-than-real time download applications
 - iv) The 5C companies' 1394 firewire implementation

One possibility for defining the products which would be royalty-free would be to distinguish between field of use applications which deal with pre-recorded, packaged media vs. those which deal with transmitted media. Macrovision is willing to commit that it will not seek royalty bearing licenses from any manufacturers in the packaged media field of use.

In addition to these applications, there is also the digital watermarking technologies, which will be a whole other form of copy protection, and which we believe should be acknowledged in the legislative history as being outside of the legislation's purview.

- d) The language which restricts us to "very small" royalties is too restrictive. We would like the term "reasonable" to replace "very small."
 - e) We would like to know whether the DVD copy protection "hacks" which have recently shown up on the Internet, along with the Regional Coding hacks, are covered by the legislation, as well as the legislative history section which talks about "these technologies do not raise playability problems, and therefore, there is no justification for the existence of any intervention device to "fix" such problems allegedly caused by these technologies..."??
- 5) One question on the form of the Amendment J: Why are there brackets around (A)(5)?

EXHIBIT 1

Effectiveness Specifications from Macrovision's License Section 1.15

1.15 "Effective" or "Effectiveness" or words of similar import means:

- 1.15.1 for the AGC System, that Recording Devices will react to the AGC signal such that, when a program has been Copy Protected with the AGC process, a Recording Device will create copies of the program which, when played back, display a reduction in their video signal amplitude of at least 65%. More specifically, a standard color bar signal containing 100% peak white, and measuring 1 volt peak-to-peak from sync tip to peak white, when Copy Protected according to the latest published AGC process specifications, should be reduced to 350 millivolts or less as measured from sync tip to peak white, when recorded and played back. [Note that the AGC pulses cycle in amplitude between zero and 117 IRE units. The reduction to 350 millivolts peak-to-peak of the recorded video level should be measured while the AGC pulses are at maximum level.];
- 1.15.2 for Colorstripe, that a Recording Device will be considered to have met the Effectiveness criteria for Colorstripe, if, on playing back a Colorstripe-protected video program which was recorded on the Recording Device used for such play back, any one or more of the following effects is produced:
 - 1.15.2.1 a complete inversion of the color phase of the chroma on those lines which began with a Colorstripe-modified colorburst;
 - 1.15.2.2 a complete loss of chroma on the active portion of those lines following a Colorstripe-modified colorburst;
 - 1.15.2.3 a complete or intermittent loss of chroma throughout at least 50% of the visible image (if intermittent, the chroma should be missing not less than 50% of the time in any 10 second interval); or
 - 1.15.2.4 any other form and level of degradation to which Macrovision in its sole and absolute discretion agrees in writing;
- 1.15.3 Licensee may satisfy the requirements for Effectiveness herein by incorporating into its Recording Devices circuitry which will detect a modified signal as described in the AGC System and/or Colorstripe and, upon doing so, stop recording;